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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

JIMMY HOWARD SELF, PETITIONER

v.

STATE OF ALABAMA

PETITION FOR A WRIT OF CERTIORARI TO THE

COURT OF CRIMINAL APPEALS OF ALABAMA

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QUESTION PRESENTED

1. Whether the federal constitutional rights of JIMMY HOWARD SELF under the Sixth Amendment, United States Constitution, were violated by a ruling of the trial court that SELF could not cross-examine a witness for the State of Alabama as to the entire transaction participated in by law enforcement officers wherein a confession was obtained and which transaction had been related in some detail by a witness for the State on direct examination by the State prosecutor, with this confession being the sole link connecting SELF with the alleged criminal activity.

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OCTOBER TERM, 1984

NO.

JIMMY HOWARD SELF, PETITIONER

v.

STATE OF ALABAMA

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF ALABAMA

JIMMY HOWARD SELF, by and through his attorney, FRED BLANTON, JR., petitions the Court for a writ of certiorari to review the judgment of the Court of Criminal Appeals of the State of Alabama in this case.

OPINIONS BELOW

The opinion of the Court of Criminal Appeals of the State of Alabama, Case No. 6 Div. 257, is attached hereto in Appendix, infra, pp. A-1 through A-6.

JURISDICTION

The judgment of the Court of Criminal Appeals of the State of Alabama was entered on June 26, 1984(Appendix, infra, p. A-7). Application for rehearing was filed on July 9, 1984, and overruled on August 14, 1984, without any opinion by the Court of Criminal Appeals (Appendix, infra, p. A-7).

A petition for a writ of certiorari was filed in the Supreme Court of Alabama, and this petition was denied on November 21,1984(Appendix, infra, p. A-8).

The statutory provision believed to confer jurisdiction on this Court to review the judgment in question is Title 28, Section 1257(3), United States Code.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Sixth Amendment to the United States Constitution provides in relevant part:

> "In all criminal prosecutions, the accused shall enjoy the right ***to be confronted with the witnesses against him;***"

STATEMENT OF THE CASE

JIMMY HOWARD SELF, petitioner here, was indicted in Jefferson County, Alabama, with the Grand Jury of said County returning an 8 count indictment for violations of Section 20-2-80, Code of Alabama, 1975. (This statute is set forth in the Opinion of the Court of Criminal Appeals of Alabama reproduced in Appendix, infra, pp. A-2 through A-4.) In essence, SELF was charged with possessing 809.3 grams of cocaine on a date to which the above statute controlled the criminal offense.

Trial was commenced, after a plea of "NOT GUILTY" was entered, on June 21, 1983.

On June 23, 1983, the trial jury found SELF "guilty of trafficking in cocaine as charged in the indictment."

Sentence was pronounced in accordance with the statute above cited and SELF was sentenced to a term of fifteen (15) years in the Alabama penitentiary, without parole, and fined a sum

of $250,000.00.

Considerable testimony was taken at the outset of the trial below concerning a cocaine sale to law enforcement officers attached to UNDO, the metropolitan narcotics detail which was in existence in the Birmingham area for a period up to about June, 1981 (Record, Vol. I, p. 31).

This narcotics buy occurred at Ramada Inn, Airport Highway, Birmingham on October 22, 1980 (R.I, 32); the sellers were one Chandler and one Bonta (R.I,33); they got between $57,000 and $58,000(R.I,37) for what later proved to be 809.3 grams of a mixture containing 24.5% to 84.6% cocaine(R.I, 115).

A careful reading of the testimony concerning this transaction is conclusive of the fact that no one was aware of any connection of SELF with it. That is, the prosecution showed no link of this criminal activity with SELF.

Later on in the same day, UNDO officers,

acting on a tip from an unidentified informer, went to the place of business of SELF and proceeded to question him about the drug sale which had just occurred at Ramada Inn (R.I, 129, et seq.)

A written confession was obtained, this being admitted into evidence. However, SELF, on direct examination, stated that the statutes in question here were read to him prior to the confession and the explanation of his constitutional rights (R.II, pp. 204-206).

The trial court sustained an objection by the State to the recitation by SELF as to what had been read or stated to him on that occasion about the statutes in question:

> "A. At that point they(UNDO) threatened me with--he read or stated--
>
> "MR. NAIL: Judge, I'm going to object to what he read or stated to him as it relates to this statute.
>
> "THE COURT: I'll sustain it. He read the statute, right, or the Code Section to you?
>
> "THE WITNESS: He either read it or stated highlights of it as to the

"number of years.

"THE COURT: That'enough of that.

"MR. JONES: We except to the Court's comments and ruling on that."

Thus, it is patent that this constitutional question arose in the context of interrogation of and concerning the obtaining of a confession.

Needless to say, this confession was the sole link which tied SELF with the drug sale at the Ramada Inn!

No arrest of SELF was made on the day of this initial interrogation of SELF by UNDO; instead the arrest came on March 26, 1981, approximately five months later(R.I,178;180).

At this point the situation becomes critical insofar as the Sixth Amendment constitutional rights of SELF are concerned, taken in connection with the facts stated by SELF on his direct examination concerning the obtaining of the confession.

The following occurred(R.I,pp.180,et seq.):

"Q. The arrest at the motel of Bonta and Chandler was on October--

"A. 22nd.

"Q. --22nd of 1980?

"A. Yes, sir.

"Q. And the arrest of Mr. Self was some 5 months later on March 26, 1981. Did you ever meet with Mr. Self or talk with him during that period of time?

"A. Never heard from him.

"Q. Did he have your telephone number?

"A. Yes, sir.

"Q. And you had asked him to help you?

"A. Yes, sir.

"Q. And you told him that you in turn would help him, assist him or if he would help you?

"A. I read him a copy of the trafficking statute and showed him the requirement on it and told him that we would present any help that he gave us to the District Attorney's office for consideration.

"Q. And the trafficking statue (sic) portion you read him--

"MR. NAIL: Judge, we object to it.

"THE COURT: I sustain it, I think it's immaterial to this."

Then, out of the presence of the jury, the witness stated that he read SELF the entire statute(R.I,182), including that portion concerning mitigation for cooperation.

Defense counsel excepted to the Court's previous ruling in not allowing the statute to be read to the jury(R.I,183).

Thereafter, in Brief on Appeal to the Court of Criminal Appeals of Alabama, SELF argued the following issue:

> WERE THE STATE AND FEDERAL CONSTITUTIONAL RIGHTS OF JIMMY HOWARD SELF UNDER ARTICLE I, SECTION 6, CONSTITUTION OF ALABAMA, 1901, and THE SIXTH AMENDMENT, UNITED STATES CONSTITUTION, AS THE SAME IS MADE APPLICABLE TO THE STATE OF ALABAMA BY THE FOURTEENTH AMENDMENT, UNITED STATES CONSTITUTION, VIOLATED BY THE RULING OF THE TRIAL COURT THAT THE DEFENDANT COULD NOT CROSS EXAMINE A WITNESS FOR THE STATE AS TO THE ENTIRE TRANSACTION PARTICIPATED IN BY LAW ENFORCEMENT OFFICERS WHEREIN A CONFESSION WAS OBTAINED AND WHICH TRANSACTION HAD BEEN RELATED IN SOME DETAIL BY A WITNESS FOR THE STATE ON DIRECT EXAMINATION BY THE STATE PROSECUTOR?

The decision of the Court of Criminal Appeals(Appendix, infra, pp. A-1 through A-6) ignored the federal constitutional question

concerning the Sixth Amendment right of full cross-examination. It is evident that the interrogation of and conversations with SELF by UNDO officers, resulting in a written confession, took place in at least three locations but all within a comparatively short period of time so that the entire confrontation of SELF by UNDO officers must be viewed as a unit. This proposition is strengthened by the fact that there was no arrest of SELF for five months.

REASONS FOR GRANTING THE WRIT

1. The Court Below Upheld the Termination of the Right of Cross-Examination in a Manner Probably Not in Accord with Previous Decisions of this Court.

Cross-examination of a witness is a matter of right. Alford v. United States, 282 U.S.687 (1931). The Sixth Amendment, United States Constitution, in the confrontation clause, secures this right, which is obligatory on Alabama by the due process clause of the Fourteenth Amend-

ment, and is thus enforceable against Alabama according to the same standards which protect the right against encroachment by the federal government. Pointer v. Texas, 380 U.S. 400(1965).

Without citation of authority the Court of Criminal Appeals of Alabama summarily disposed of the federal constitutional argument of SELF in the following language:

> "Brooks repeatedly testified that no inducement was made to appellant to secure his confession. Since the record lays a proper voluntariness predicate for the admission of Self's confession, we can find no relevant purpose in reading the Code section in question to the jury. Clearly the references to sentencing contained within the statutes are improper jury considerations, since sentencing lies within the exclusive realm of the trial court. See §13A-5-1, Code of Alabama, 1975." See Appendix, infra, p. A-6.

In the context of what transpired in obtaining the confession of SELF, and the dispute in the Record about the circumstances, then the"proper voluntariness predicate" is in factual dispute presenting a question for

the resolution of the jury. The subject of the voluntariness was not exhausted until everything that was said during the procurement of the confession was brought before the jury. Alford v. United States, supra; United States v. Tolliver, 665 F2d 1005(11th Cir.,1982), cert.den. 456 U.S. 935.

In this case at nisi prius, the State questioned its witness on direct examination in its case in chief about the transaction or occurrence which resulted in the confession being given by SELF. This transaction or occurrence in all respects being of vital concern to SELF in the context of voluntariness and the weight to be given to the confession by the jury was subject to the absolute right of cross-examination. The discretion which exists in a trial court in certain instances to limit cross-examination was never triggered in this case.

Further, the trial court in its charge to the jury recognized that the jury was the judge of the terms and conditions surrounding the confession of SELF:

> "Now, you have seen and read and heard a statement here. This statement, ladies and gentlemen, is in evidence. Circumstances and conditions surrounding the taking of this statement were gone over in March before this Court. This Court went over the entire facts. This Court at that time ruled that the statement was admissible in evidence. This Court does not say the statement is true. This Court does not say the statement is false. In letting it come into evidence all I do is say the jury may consider this statement. It's not up to me to say the terms or conditions under which this statement was given except, of course, you have heard Miranda rights. ***What you all think about it, right, wrong, true, false is entirely up to you and not this Court.***" (R.II,309)

It is evident here that the jury could not correctly determine the terms and conditions as charged by the trial court unless and until it had ALL the evidence available concerning those terms and conditions, which would mean a determination concerning the reading of the statutes here involved.

The cross-examination being pursued by counsel for SELF pertained to specific matters essential to the presentation of its case by the State of Alabama. The trial court, therefore, could not constitutionally foreclose testimony concerning the circumstances surrounding the obtaining of the confession from SELF. See United States v. Young, 655 F2d 624(5th Cir. 1981).

And this would be true even though it is the law in Alabama that the court, and not the jury, assesses penalties. A statement of penalties, and other statutory provisions, by an interrogating officer in obtaining a confession may be the key to a jury's determination of whether or not a confession be voluntary. The Court of Criminal Appeals approved the action of the trial court in eliminating essential matters from

the jury concerning voluntariness.

No case has been located which has addressed the specific problem of cross-examination and its termination in the confession stage of a case in chief, nor where sentences are mentioned in a state where the Court sets the penalty within the statutory limits.

Particularly where the confession is the SOLE link of defendant to the alleged crime, and there is no other evidence of his participation, the right of cross-examination should be permitted to its fullest extent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

January, 1985 FRED BLANTON, JR.

APPENDIX

APPENDIX A

THE DECISIONS BELOW

THE STATE OF ALABAMA---JUDICIAL DEPARTMENT
THE ALABAMA COURT OF CRIMINAL APPEALS
OCTOBER TERM, 1983-84

FILED
JUN 26 1984
ALA COURT CRIMINAL APPEALS
MOLLIE JORDAN, CLERK

6 Div. 257

Jimmy Howard Self

v.

State

Appeal from Jefferson
Circuit Court

PATTERSON, JUDGE

Appellant Jimmy Howard Self was found guil-
of trafficking in cocaine, in violation of the Alabama Controlled Substances Act. He was sentenced to fifteen year's imprisonment without parole and fined $250,000.

The relevant facts show that an informant implicated appellant in the sale of a large quantity of cocaine. When confronted by law enforcement authorities, appellant confessed. The

record reveals in detail that a complete and proper Miranda predicate was laid before appellant made his statement. Self indicated that he understood his rights before he waived them, and the testimony is clear that the(sic) was in no way induced to make the statement. His waiver and his confession were reduced to writing, and he signed them in the presence of witnesses.

Sergeant Howard Brooks of the United Narcotics Detail Operation, who was present at the time Self made his confession, indicated he read appellant a copy of the trafficking statutes. Sections 20-2-80 and 20-2-81, Code of Alabama 1975, read as follows:

§20-2-80:

> "Except as authorized in Chapter 2, Title 20:
>
> (1) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of one kilo or 2.2 pounds of cannabis is guilty of a felony, which felony shall be known as 'trafficking in cannabis.'

"If the quantity of cannabis involved:

a. Is in excess of one kilo or 2.2 pounds, but less than 2,000 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of $25,000.00.

b. Is 2,000 pounds or more, but less than 10,000 pounds, such peron(sic) shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of $50,000.00.

c. Is 10,000 pounds or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of $200,000.00.

(2) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine or of any mixture containing concaine(sic), described in section 20-2-25(1), is guilty of a felony, which felony shall be known as 'trafficking in cocain.'(sic) If the quantity involved:

a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of $50,000.00.

b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of $100,000.00.

c. Is 400 grams or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of $250,000.00.

"(3) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, four grams or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described in section 20-2-23(2) or section 20-2-25(1)a, or four grams or more of any mixture containing any such substance, is guilty of a felony, which felony shall be known as 'trafficking in illegal drugs.' If the quantity involved:

a. Is four grams or more, but less than 14 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of $50,000.00.

b. Is 14 grams or more, but less than 28 grams, such person shall be sentenced to a mandatory minimum term or imprisonment of 10 calendar years and to pay a fine of $100,000.00.

c. Is 28 grams ore(sic) more, such person shall be sentenced to a mandatory minimum twrm of imprisonment of 25 calendar years and to pay a fine of $500,000.00."

§20-2-81:

"(a) Notwithstanding the provisions of chapter 22, Title 15, with respect to any person who is found to have violated this article, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this article.

"(b) The prosecuting attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this article and who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, coconspirators, or principals. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if he finds that the defendant rendered such substantial assistance. (Acts 1980, No. 80-587, p. 926.)"

The only issue raised by this appeal is whether the trial court erred when it refused to allow appellant to read the trafficking statutes to the jury during trial. Self claims that this denial abrogated his constitutional right of cross-examination by limiting his inquiry concerning the circumstances surrounding his confession.

We cannot agree. The record is unclear exactly when Sergeant Brooks read appellant the trafficking statutes. However, Brook's

testimony implies that the statutes were read after the confession was made, as evidenced by this portion of the record:

> "Q. The(sic) he (appellant) was promised some help if he would cooperate?
>
> "A. After the statement was made."

Brooks repeatedly testified that no inducement was made to appellant to secure his confession. Since the record lays a proper voluntariness predicate for the admission of Self's confession, we can find no relevant purpurpose in reading the Code section in question to the jury. Clearly the references to sentencing contained within the statutes are improper jury considerations, since sentencing lies within the exclusive realm of the trial court. See §13A-5-1, Code of Alabama 1975.

We must conclude, therefore, that no error was committed by the trial judge, and the judgment of the lower court is due to be affirmed.

AFFIRMED.

ALL THE JUDGES CONCUR.

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I, Mollie Jordan, Clerk of the Court of Criminal Appeals, do hereby certify that the foregoing pages numbered from one through five are a full, true and correct copy of the opinion rendered by this Court on June 26, 1984, in the appeal of Jimmy Howard Self v. State of Alabama, Jefferson Circuit Court Number CC-82-797, 6 Div. 257.

I further certify that an application for rehearing filed on behalf of appellant on July 9, 1984, was overruled by this Court without any opinion on August 14, 1984.

WITNESS, Mollie Jordan, Clerk of the Court of Criminal Appeals, this 4th day of January, 1985.

s/ Mollie Jordan
CLERK, COURT OF CRIMINAL APPEALS OF ALABAMA

(S E A L)

THE STATE OF ALABAMA-JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

November 21, 1984

83-1343

EX PARTE: JIMMY HOWARD SELF

PETITION FOR WRIT OF CERTIORARI

(Re: Jimmy Howard Self v. State)

CRIMINAL APPEALS 6/257

CERTIFICATE OF JUDGMENT
WRIT DENIED

The above cause having been submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari be denied.

Costs taxed to petitioner.

MADDOX, J.- TORBERT,CJ., JONES, SHORES AND BEATTY, JJ., CONCUR.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 21 day of Nov 1984.

s/ Robert G. Esdale
Clerk, Supreme Court of Alabama